

**Introduced by Senator Calderon**

February 17, 1998

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An act to amend Sections 10089.5, 10089.16, 10089.23, 10089.26, and 10089.30 of the Insurance Code, relating to earthquake insurance, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1716, as introduced, Calderon. California Earthquake Authority.

Existing law provides for creation of the California Earthquake Authority, to be administered under the authority of the Insurance Commissioner. The authority is authorized to sell policies of basic residential earthquake insurance. Existing law provides that residential property insurers shall either continue to offer and issue residential earthquake insurance policies, or otherwise may elect to participate in the authority upon compliance with certain capital contribution requirements, in which case the participating insurers may transfer their earthquake risk to the authority. Existing law provides for the assessment of participating insurers based on the insurer's residential earthquake insurance market share, as defined, if the authority requires additional resources to pay claims.

This bill would instead provide for assessment of participating insurers based on the insurer's authority earthquake insurance market share, as defined.

The bill would make other related changes.

The bill would also take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 10089.5 of the Insurance Code is  
2 amended to read:

3 10089.5. As used in this chapter:

4 (a) “Authority” means the California Earthquake  
5 Authority.

6 (b) “*Authority earthquake insurance market share*”  
7 *means an individual insurer’s total direct premium*  
8 *received for residential earthquake policies written or*  
9 *renewed by the authority for which the insurer has*  
10 *written or renewed an underlying policy of residential*  
11 *property insurance, divided by the total gross premiums*  
12 *received by the authority for basic residential earthquake*  
13 *insurance.*

14 (c) “Available capital” means the sum of all moneys  
15 and invested assets actually held in the California  
16 Earthquake Authority Fund, except as otherwise  
17 allocated to pay specific losses and loss adjustment  
18 expenses under policies of basic residential earthquake  
19 insurance. “Available capital” includes all interest or  
20 other income from the investment of money held in the  
21 California Earthquake Authority Fund. “Available  
22 capital” does not include the proceeds of contracts of  
23 reinsurance procured by or in the name of the authority  
24 pursuant to subdivision (a) of Section 10089.10, or any  
25 funds realized on account of any transaction pursuant to  
26 capital market contracts authorized by subdivision (b) of  
27 Section 10089.10.

28 ~~(e)~~

29 (d) “Basic residential earthquake insurance” means  
30 that policy of residential earthquake insurance described  
31 in Section 10089 except as follow:

32 (1) (A) If one year after the authority commences  
33 operation the authority has available capital equal to or

1 exceeding seven hundred million dollars (\$700,000,000),  
2 any policy issued or renewed on or after that date shall  
3 provide, less any applicable deductible, not less than two  
4 thousand five hundred dollars (\$2,500) in coverage for  
5 additional living expenses.

6 (B) If the authority met the available capital  
7 requirements of subparagraph (A) and two years after  
8 the authority commences operation the authority has  
9 available capital equal to or exceeding seven hundred  
10 million dollars (\$700,000,000), any policy issued or  
11 renewed on or after that date shall provide, less any  
12 applicable deductible, not less than three thousand  
13 dollars (\$3,000) in coverage for additional living  
14 expenses.

15 (2) (A) If the authority did not meet the available  
16 capital requirement of subparagraph (A) of paragraph  
17 (1) but, two years after the authority commences  
18 operation the authority has available capital equal to or  
19 exceeding seven hundred million dollars (\$700,000,000),  
20 any policy issued or renewed on or after that date shall  
21 provide, less any applicable deductible, not less than two  
22 thousand five hundred dollars (\$2,500) in coverage for  
23 additional living expenses.

24 (B) If the authority met the available capital  
25 requirements in as provided by subparagraph (A) and  
26 three years after the authority commences operation the  
27 authority has available capital equal to or exceeding  
28 seven hundred million dollars (\$700,000,000), any policy  
29 issued or renewed on or after that date shall provide, less  
30 any applicable deductible, not less than three thousand  
31 dollars (\$3,000) in coverage for additional living  
32 expenses.

33 ~~(d)~~

34 (e) “Board” means the governing board of the  
35 authority.

36 ~~(e)~~

37 (f) “Bonds” means bonds, notes, commercial paper,  
38 variable rate and variable maturity securities, and any  
39 other evidence of indebtedness.

40 ~~(f)~~

1 (g) “Capital market contract” means an agreement  
2 between the authority and a purchaser pursuant to which  
3 the purchaser agrees to purchase bonds of the authority.  
4 ~~(g)~~  
5 (h) “Nonparticipating insurer” means an insurer that  
6 elects not to transfer or place any residential earthquake  
7 policies in the authority.  
8 ~~(h)~~  
9 (i) “Panel” means the advisory panel of the authority.  
10 ~~(i)~~  
11 (j) “Participating insurer” means an insurer that has  
12 elected to join the authority.  
13 ~~(j)~~  
14 (k) “Policy of residential property insurance” means  
15 those policies described in Section 10087.  
16 ~~(k)~~  
17 (l) “Private capital market” means one or more  
18 purchasers of bonds of the authority pursuant to a capital  
19 market contract.  
20 ~~(l)~~  
21 (m) “Qualifying residential property” includes all  
22 those residential dwellings set forth in Section 10087.  
23 ~~(m)~~  
24 (n) “Residential earthquake insurance market share”  
25 means an individual insurer’s total direct premium  
26 received for (1) residential earthquake policies and  
27 endorsements written or renewed by the insurer in  
28 California and (2) residential earthquake policies written  
29 or renewed by the authority for which the insurer has  
30 written or renewed an underlying policy of residential  
31 property insurance, divided by the total gross premiums  
32 received by all admitted insurers and the authority for  
33 their basic residential earthquake insurance in California.  
34 ~~(n)~~  
35 (o) “Residential property insurance market share”  
36 means an individual insurer’s total gross premiums  
37 received for residential property insurance policies  
38 written or renewed by the insurer, divided by the total  
39 gross premiums received by all admitted insurers for  
40 residential property insurance in California.



1 ~~(e)~~

2 (p) “Revenue” means all income and receipts of the  
3 authority, including, but not limited to, income and  
4 receipts derived from premiums, bond purchase  
5 agreements, capital contributions by insurers,  
6 assessments levied on insurers, surcharges applied to  
7 authority earthquake policyholders, and all interest or  
8 other income from investment of money in any fund or  
9 account of the authority established for the payment of  
10 principal or interest, or premiums on bonds, including  
11 reserve funds.

12 SEC. 2. Section 10089.16 of the Insurance Code is  
13 amended to read:

14 10089.16. (a) On application to the board, payment  
15 of any assessments and fees calculated by the board, and  
16 fulfillment of any additional requirements imposed by  
17 the board, nonparticipating insurers may become  
18 participants in the authority with all rights and privileges  
19 attendant to that participation.

20 (b) In order to act upon any findings and  
21 recommendations reported to the Legislature pursuant  
22 to Section 10089.13, or to implement a specific finding by  
23 the commissioner or the board that modification of  
24 requirements for entry into the authority is necessary to  
25 broaden the availability of residential property or  
26 residential earthquake insurance, the board is authorized  
27 to open the authority to participation by insurers who  
28 have not elected to participate in compliance with  
29 Section 10089.15. In implementing the authority granted  
30 by this section, the board may:

31 (1) Offer incentives for insurers to participate in the  
32 authority.

33 (2) Allow any insurer or insurer group that has not  
34 elected to become a participating insurer to become an  
35 associate participating insurer without complying with  
36 the capital contribution requirements of Section 10089.15  
37 if it has maintained or exceeded its number of policies of  
38 residential property insurance written as of January 1,  
39 1996.

1 (c) Any action by the board pursuant to subdivision  
2 (b) shall be subject to the following conditions and  
3 limitations:

4 (1) Any deliberation and action by the board shall be  
5 conducted at a public meeting of the board.

6 (2) No action may be taken within one year of the date  
7 upon which the authority begins writing policies of basic  
8 residential earthquake insurance.

9 (3) The board shall have no authority to modify the  
10 requirements of Section 10089.23 or 10089.30, or to  
11 provide, in any other manner, for reduction of the liability  
12 of an insurer or insurer group to comply with the  
13 assessments placed upon participating insurers in the  
14 event of a loss.

15 (4) Notwithstanding Section 10089.11, any action of  
16 the board pursuant to subdivision (b) shall be by  
17 regulation promulgated by the board. Notwithstanding  
18 any other provision of law, there shall be no authority by  
19 the board to promulgate emergency regulations to  
20 implement subdivision (b). No regulations may be  
21 proposed within one year of the date upon which the  
22 authority begins writing policies of basic residential  
23 earthquake insurance. Notwithstanding any exception  
24 provided in Section 11343 of the Government Code, any  
25 regulation adopted pursuant to subdivision (b) shall be  
26 submitted to the Office of Administrative Law for  
27 approval pursuant to the Administrative Procedure Act.

28 (5) Any action by the board to establish an incentive  
29 pursuant to subdivision (b) that is available to a single  
30 insurer or insurer group shall be based upon standards  
31 adopted by the board that are not arbitrary or  
32 discriminatory. Notwithstanding Section 10089.11, these  
33 standards shall be established by regulation promulgated  
34 by the board.

35 (6) A finding of necessity pursuant to subdivision (b)  
36 shall state the specific facts and conditions that establish  
37 the necessity and justify the actions to implement  
38 subdivision (b). All materials and documents prepared or  
39 used by the authority to determine the necessity to  
40 implement subdivision (b), other than proprietary

1 materials and documents owned or licensed by third  
2 parties, shall be considered public documents, and copies  
3 of the public documents shall be made available to the  
4 public for inspection at no charge. Members of the public  
5 may purchase copies of these documents from the  
6 authority at actual cost.

7 (d) Associate participating insurers shall place all new  
8 policies of residential earthquake insurance, when  
9 writing new policies of residential property insurance,  
10 into the authority. Insurers placing policies with the  
11 authority under this section shall be subject to the  
12 assessments provided for in Sections 10089.23 and  
13 10089.30. ~~Notwithstanding subdivision (m) of Section~~  
14 ~~10089.5, “residential earthquake insurance market share”~~  
15 ~~for purposes of any assessments pursuant to Sections~~  
16 ~~10089.23 and 10089.30 levied on an associate participating~~  
17 ~~insurer shall mean an individual associate participating~~  
18 ~~insurer’s total direct premium received for residential~~  
19 ~~earthquake policies written or renewed by the authority~~  
20 ~~for which the insurer has written or renewed an~~  
21 ~~underlying policy of residential property insurance,~~  
22 ~~divided by the total gross premiums received by all~~  
23 ~~admitted insurers and the authority for their basic~~  
24 ~~residential earthquake insurance in California.~~

25 (e) (1) An associate participating insurer shall not  
26 cancel or refuse to renew a residential property insurance  
27 policy existing on the date it elected to become an  
28 associate participating insurer after an offer of  
29 earthquake coverage is accepted solely because the  
30 insured has accepted that offer of earthquake coverage.

31 (2) An associate participating insurer shall maintain in  
32 force any policy of residential property insurance existing  
33 on the date it elected to become an associate participating  
34 insurer after an offer of earthquake insurance has been  
35 accepted, unless the policy is properly canceled pursuant  
36 to Section 676 or the associate participating insurer has  
37 grounds for nonrenewal pursuant to subdivision (f).

38 (f) An associate participating insurer may refuse to  
39 renew a policy of residential property insurance after an

1 offer of earthquake coverage has been accepted if one of  
2 the following exceptions applies:

3 (1) The policy is terminated by the named insured.

4 (2) The policy is refused renewal on the basis of sound  
5 underwriting principles that relate to the coverages  
6 provided by the underlying policy of residential property  
7 insurance and that are consistent with the approved  
8 rating plan and related documents filed with the  
9 department as required by existing law.

10 (3) The commissioner finds that the exposure to  
11 potential losses will threaten the solvency of the associate  
12 participating insurer or place the associate participating  
13 insurer in a hazardous condition. "Hazardous condition"  
14 has the same meaning as in Section 1065.1 and includes,  
15 but is not limited to, a condition in which an associate  
16 participating insurer makes claims payments for losses  
17 resulting from an earthquake that occurred within the  
18 preceding two years and that required a reduction in  
19 policyholder surplus of at least 25 percent for payment of  
20 those claims.

21 (4) There is cancellation under Section 676.

22 (5) The associate participating insurer has lost or  
23 experienced a substantial reduction in the availability or  
24 scope of reinsurance coverage or a substantial increase in  
25 the premium charged for reinsurance coverage for its  
26 residential property insurance policies, and the  
27 commissioner has approved a plan for the nonrenewals  
28 that is fair and equitable, and that is responsive to the  
29 changes in the associate participating insurer's  
30 reinsurance position.

31 (6) The named insured is insured based upon  
32 membership in a motor club, as defined in Section 12142,  
33 and the membership in that organization is terminated as  
34 provided in paragraph (2) of subdivision (c) of Section  
35 1861.03.

36 (g) For associate participating insurers, underwriting  
37 standards applicable to residential property insurance  
38 shall not be applied in an unfairly discriminatory fashion  
39 against any person who accepts or elects to continue  
40 earthquake coverage.



1 (h) Associate participating insurers shall be subject to  
2 the following requirements:

3 (1) Associate participating insurers shall conform to all  
4 provisions of the authority's plan of operation applicable  
5 to participating insurers.

6 (2) No property that has previously been covered by  
7 a policy of residential earthquake insurance written by  
8 the associate participating insurer or associate  
9 participating insurer group, absent at least one full policy  
10 year with an insurer not affiliated with the associate  
11 participating insurer or its group, may be placed into the  
12 authority by an associate participating insurer.

13 (3) Any associate participating insurer or associate  
14 participating insurer group defined in paragraph (2) of  
15 subdivision (b) that has failed to maintain or exceed the  
16 number of policies of residential property insurance in  
17 force on January 1, 1996, may become an associate  
18 participating insurer by contributing additional capital  
19 into the authority at a rate to be established by the board,  
20 which shall be a per policy rate comparable to the  
21 average cost per policy paid by a participating insurer  
22 that joins the authority pursuant to Section 10089.15.

23 (i) Any associate participating insurer shall be  
24 required to establish procedures to verify compliance  
25 with this section. The procedures shall require  
26 verification that each basic residential earthquake policy  
27 written by the authority complies with paragraph (2) of  
28 subdivision (h).

29 (j) Any violation of this section may be enforced as a  
30 violation of the Unfair Trade Practices Act (Article 6.5  
31 (commencing with Section 790) of Chapter 1 of Part 2 of  
32 Division 1). Each policy of basic residential earthquake  
33 insurance written in the authority by an associate  
34 participating insurer in violation of this section shall be  
35 deemed to be a separate violation of the Unfair Trade  
36 Practices Act.

37 (k) For purposes of this section, no insurer or associate  
38 participating insurer may participate in the authority  
39 unless all affiliated insurers participate in the authority.

1 (l) Policies of basic residential earthquake insurance  
2 written by associate participating insurers shall be subject  
3 to assessment by the California Insurance Guaranty  
4 Association and shall be covered to the extent provided  
5 in Article 14.2 (commencing with Section 1063) of  
6 Chapter 1 of Part 2 of Division 1. Except as provided in  
7 Section 10089.34, insurance policies written by  
8 participating insurers that are not associate participating  
9 insurers shall not be subject to assessment by the  
10 California Insurance Guaranty Association if the  
11 assessment is imposed to pay claims covered by policies  
12 of basic residential earthquake insurance written by an  
13 associate participating insurer.

14 SEC. 3. Section 10089.23 of the Insurance Code is  
15 amended to read:

16 10089.23. (a) (1) If at any time following the  
17 payment of earthquake losses the authority's available  
18 capital is reduced to less than three hundred fifty million  
19 dollars (\$350,000,000), or if at any time the authority's  
20 available capital is insufficient to pay benefits and  
21 continue operations, the authority shall have the power  
22 to assess participating insurance companies subject to the  
23 maximum limits as set forth in this section and Section  
24 10089.30. The assessment shall be limited to the amount  
25 necessary to pay the outstanding or expected claims of  
26 the authority and to return the authority's available  
27 capital to three hundred fifty million dollars  
28 (\$350,000,000), as determined by the board, subject to  
29 approval by the commissioner.

30 (2) Each participating insurer's assessment shall be  
31 determined by multiplying its ~~residential~~ *authority*  
32 earthquake insurance market share, as of December 31 of  
33 the immediately preceding year or the most recent year  
34 for which premium data not more than one year old are  
35 available, by the amount of the total assessment sought by  
36 the authority.

37 (3) Maximum permissible insurer assessments  
38 pursuant to this section and Section 10089.30, maximum  
39 permissible earthquake policyholder assessments  
40 pursuant to Section 10089.29, and maximum permissible

1 bond issuances or other debt financing issued or secured  
2 by the Treasurer pursuant to Section 10089.29 shall be  
3 reduced uniformly by multiplication of the maximum  
4 assessments and other amounts provided in those sections  
5 by the percentage of the total residential property  
6 insurance market share participation attained by the  
7 authority upon its commencement, as described in  
8 Section 10089.15. The total amount of all assessments  
9 levied on participating insurance companies by the  
10 authority pursuant to this section shall not exceed three  
11 billion dollars (\$3,000,000,000), regardless of the  
12 frequency or severity of earthquake losses at any and all  
13 times subsequent to the creation of the authority. Once  
14 a participating insurer has paid amounts equal to its  
15 ~~residential~~ authority earthquake insurance market share  
16 multiplied by three billion dollars (\$3,000,000,000)  
17 pursuant to this section, the authority's power to assess  
18 that insurer under this section shall cease and the  
19 authority shall be prohibited from levying additional  
20 assessments on that insurer pursuant to this section.

21 (4) Beginning December 31 of the first year of  
22 operations, and each December 31 thereafter, the board  
23 shall adjust the maximum permissible insurer assessments  
24 pursuant to this section and Section 10089.30, the  
25 maximum permissible authority policyholder assessment  
26 pursuant to Section 10089.29, and the maximum  
27 permissible bond issuances or other debt financing issued  
28 or secured by the Treasurer pursuant to Section 10089.29  
29 to reflect the market share of new insurers entering into  
30 the authority as authorized by Sections 10089.15 and  
31 10089.16 and participating insurers withdrawing from the  
32 authority as authorized by Section 10089.19. The  
33 adjustments shall be made in the same manner as  
34 authorized by paragraph (3).

35 (b) In the case of any insurer assessment, the authority  
36 shall cause to be sent to each participating insurer a notice  
37 of that insurer's assessment, and full payment shall be due  
38 within 30 days and shall be overdue after 30 days.  
39 Penalties and interest shall be assessed for late payments  
40 in the same manner as provided for late payments of the

1 insurer gross premium tax pursuant to Section 12258 of  
2 the Revenue and Taxation Code. The board may waive  
3 the penalties and interest for good cause shown. The  
4 board shall make every effort to assess insurers only for  
5 funds reasonably anticipated to be necessary for claims  
6 payments and to return the authority's available capital  
7 to three hundred fifty million dollars (\$350,000,000).

8 (c) Notwithstanding the other provisions of this  
9 section, the aggregate assessment authorized by this  
10 section shall be reduced to zero 12 years following the  
11 commencement of authority operations.

12 SEC. 4. Section 10089.26 of the Insurance Code is  
13 amended to read:

14 10089.26. (a) The authority shall issue policies of  
15 basic residential earthquake insurance, including  
16 earthquake loss assessment policies for individual  
17 condominium unit properties, to any owner of a  
18 qualifying residential property, as long as the owner has  
19 secured a policy of residential property insurance from a  
20 participating insurer.

21 (1) For purposes of this section, earthquake loss  
22 assessment coverage shall be issued in a minimum  
23 amount of fifty thousand dollars (\$50,000) for individual  
24 condominium units valued at more than one hundred  
25 thirty-five thousand dollars (\$135,000). Earthquake loss  
26 assessment coverage shall be issued in a minimum  
27 amount of twenty-five thousand dollars (\$25,000) for  
28 individual condominium units of one hundred thirty-five  
29 thousand dollars (\$135,000) in value or less. The value of  
30 the land shall be excluded when determining the value of  
31 the condominium, as it relates to the earthquake loss  
32 assessment coverage offered by the authority.

33 (2) The panel shall submit to the board, and the board  
34 shall approve, rates for earthquake loss assessment  
35 coverage that reasonably balance the earthquake loss  
36 assessment coverages offered and the potential exposure  
37 to earthquake loss resulting from ~~a~~ *an* earthquake loss  
38 assessment policy as compared to the coverages offered  
39 and the potential exposure to earthquake loss resulting



1 from residential property other than individual  
2 condominium policies.

3 It is the intent of the Legislature, to the extent  
4 practicable, that rates charged by the authority to  
5 condominium loss assessment policyholders and  
6 residential property owner policyholders are treated  
7 equitably, and that a proportionate share of premiums is  
8 paid for potential exposure to loss, to the authority.

9 (b) Nothing in this section shall prohibit a  
10 participating or nonparticipating insurer from offering a  
11 condominium earthquake loss assessment policy for  
12 different amounts of coverage other than those offered by  
13 the authority.

14 SEC. 5. Section 10089.30 of the Insurance Code is  
15 amended to read:

16 10089.30. If benefits paid by the authority due to  
17 earthquake events exhaust the total of (a) the authority's  
18 available capital, (b) the maximum amount of all insurer  
19 capital contributions and assessments pursuant to  
20 Sections 10089.15 and 10089.23, (c) all reinsurance  
21 actually available and under contract to the authority, (d)  
22 the maximum amount of all authority policyholder  
23 assessments pursuant to Section 10089.29, and (e) all  
24 capital committed and actually available from the private  
25 capital markets, the board, subject to the approval of the  
26 commissioner, shall have the power to assess  
27 participating insurance companies subject to the  
28 maximum limits in this section. The total amount of all  
29 assessments levied against participating insurance  
30 companies by the authority pursuant to this section shall  
31 not exceed two billion dollars (\$2,000,000,000), regardless  
32 of the frequency or severity of earthquake losses at any  
33 and all times subsequent to the creation of the authority.  
34 Once a participating insurer has paid amounts equal to its  
35 ~~residential~~ authority earthquake insurance market share  
36 percentage multiplied by two billion dollars  
37 (\$2,000,000,000) pursuant to this section, the authority's  
38 power to assess that insurer under this section shall cease  
39 and the authority shall be prohibited from levying  
40 additional assessments on that insurer pursuant to this

1 section. The board shall make assessments pursuant to  
2 this section by the same method set forth in paragraph (2)  
3 of subdivision (a) of Section 10089.23, in proportion to  
4 each participating insurer's ~~—residential~~ authority  
5 earthquake insurance market share. The assessment shall  
6 be limited to the amount necessary to pay the expected  
7 claims of the authority and return the authority's  
8 available capital to three hundred fifty million dollars  
9 (\$350,000,000), as determined by the board, subject to  
10 approval by the commissioner.

11 SEC. 6. This act is an urgency statute necessary for the  
12 immediate preservation of the public peace, health, or  
13 safety within the meaning of Article IV of the  
14 Constitution and shall go into immediate effect. The facts  
15 constituting the necessity are:

16 In order to make certain modifications as soon as  
17 possible that are necessary for the efficient operation of  
18 the California Earthquake Authority and the continued  
19 availability of earthquake insurance to California  
20 homeowners, it is necessary that this act take effect  
21 immediately.

